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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 291 of 1995

Date of decision: 1.2.2007

The Commissioner of Income-Tax (Central), Ludhiana ..Petitioner

Versus

M/S Raj & San Deeps Ltd., Ludhiana ...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Garg Narwana, Advocate for the Revenue
Mr.Rohit Sud, Advocate for the Assessee.

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RAJESH BINDAL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short , 'the Tribunal) that arises out of its order dated 18.2.1993 in ITA No.1853/Chandi/92 for the assessment year 1989-90:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition made u/s 43-B on account of advance excise duty paid which was neither debited to profit and loss account nor sales account or made part of the purchase price?"

Briefly the facts, as noticed by the Tribunal in the statement of case, are that assessee had claimed deduction of Rs. 1,68,582/- on account of excise duty allegedly paid in advance. The expense claimed on that account was disallowed by the Assessing Officer and he treated the same to be an advance payment which was not covered under Section 43-B of the Income Tax Act, 1961 (for short 'the Act'). In appeal, the

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Commissioner of Income Tax (Appeals) (for short 'the CIT(A)') found addition of Rs.1,06,390/- out of total amount of Rs.1,68,582/- disallowed by the Assessing Officer 0which had already been confirmed during the assessment year 1988-89. He accordingly deleted that amount from the addition of Rs. 1,68,582/- for assessment year 1989-90 and confirmed the addition of the balance amount of Rs. 61,992/-. In further appeal before the Tribunal, the entire addition was deleted. It was found by the Tribunal that excise duty under the provisions of Central Excise Rules, 1944 became payable as soon as the goods were manufactured and the assessee was under statutory obligation to keep that much amount in account with the Collector of Custom, known as 'account-current'. It is only at the time of removal of goods, a debit entry has to be made in the account. Otherwise, excise duty had become payable the moment excisable goods were manufactured. The duty so deposited in the 'account-current' was irrevocable in nature and not refundable to the assessee. Since the amount was paid as excise duty by the assessee in the 'account-current' on account of goods manufactured during the year in question, the same was held to be expenses which could not be disallowed.

We have heard Shri S.K.Garg Narwana, learned counsel for the Revenue and Shri Rohit Sud, learned counsel for the Assessee.

The only contention raised by the learned counsel for the Revenue is that since the goods in question were not removed from the premises of the assessee during the year in question, the duty amount would be considered to have been paid in advance and accordingly the assessee was not entitled to deduction thereof during the year in question as the expense was to relate to the year in which the goods were removed from the factory. Any advance payments of taxes, which do not relate to the assessment year in question, is not permissible deduction.

On the other hand, learned counsel for the assessee submitted that the assessee was statutorily required to deposit the duty the moment goods were manufactured and was under obligation to keep amount to the extent of duty as calculated on the goods so manufactured in the 'account-

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current'. The assessee was not entitled to refund of the amount once deposited in the 'account-current', however, debit entry was made at the time of removal of goods from the factory. He has relied upon the judgment of Gauhati High Court in **India Carbon Ltd. Vs. Inspecting Assistant Commissioner of Income Tax and another (1993) 200 ITR 759.**

Having heard learned counsel for the parties, we find the contention raised by the learned counsel for the Revenue to be totally misconceived. Once it is found as a fact by the Tribunal that duty as per statutory provisions became payable, the moment goods were manufactured then the assessee was under obligation to deposit that much amount in the 'account-current' and the amount so deposited in the 'account-current' being non refundable, there was no reason for the Revenue to deny the benefit of deduction in the year in question when the goods were manufactured and amount was deposited in the 'account-current'. The expense would certainly relate to the year in which the goods were manufactured and amount was deposited, which cannot possibly be treated as an advance.

Accordingly, the question referred is answered against the Revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Rajesh Bindal)
Judge

Feburary 01,2007
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(M.M.Kumar)
Judge